

Appl. No. 10/051,952
Reply to Office Action of November 26, 2004

Remarks

Introduction

Claims 1-4, 6-7, 9-10, 12, and 36-45 were pending. By way of this response, claim 1, 36, 39, and 45 have been amended, and claims 6, 7, 9 and 40-42 have been cancelled without prejudice. Support for the amendments to the claims can be found in the application as originally filed, and no new matter has been added. Accordingly, claims 1-4, 10, 12, 36-39, and 43-45 remain pending.

In view of the amendments and remarks herein, applicant requests reconsideration of the rejections.

Rejections Under 35 U.S.C. § 112, Second Paragraph

Claim 39 has been rejected under 35 U.S.C. § 112, second paragraph as allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 39 has been amended by deleting the phrase "preferably solid or metallic material".

In view of the above, applicant submits that the present claims, and in particular claim 39, satisfy the requirements of 35 U.S.C. § 112, second paragraph, and respectfully requests that the rejection of the present claims based on this statutory provision be withdrawn.

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Rejections Under 35 U.S.C. § 103

Claims 1, 2, 6, 7, 9, 10, 12, 36, 37, and 40-45 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Borodic (U.S. Patent No. 5,183,462) taken with Vadoud-Seyedi et al. (hereinafter Vadoud). Claims 3, 4, 38, and 39 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Borodic in view of Vadoud, and further in view of McCabe (U.S. Patent No. 5,525,510).

Applicant traverses the rejections, especially as they relate to the present claims.

Applicant maintains that a person of ordinary skill in the art would not be motivated to combine the teachings of Borodic with Vadoud, as set forth in applicant's previous response. However, to advance the prosecution of the above-identified application, the present claims have been amended as set forth above.

The present claims recite that the botulinum toxin is administered to a human subject using a needleless syringe having a pressure sufficient to deliver the botulinum toxin to a muscle tissue associated with a wrinkle or brow furrow.

Borodic discloses injections of botulinum toxin formulations using needles.

Vadoud discloses needleless injection of a botulinum toxin to the soles of the feet of 3 patients to treat the glandular condition of plantar hyperhidrosis. Vadoud does not disclose

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any characteristics of the needleless syringe or the method of administration, let alone a method of treating wrinkles or brow furrows in a patient.

Applicant submits that the present claims are patentable over the combination of Borodic and Vadoud since the combination of references fails to disclose, teach, or suggest all of the elements recited in the present claims. For example, the combination of references fails to disclose, teach, or even suggest administration of a botulinum toxin using a needleless syringe having a pressure sufficient to deliver a botulinum toxin to a muscle tissue associated with a wrinkle or brow furrow, as recited in the present claims.

In contrast, applicant submits that Vadoud actually teaches away from the present claims since Vadoud only discloses administration to the soles of feet of patients to treat sweat glands associated with plantar hyperhidrosis. As discussed in applicant's previous response, sweat glands which are treated by Vadoud are located in the dermal layer of the skin. As discussed in the specification of the above-identified application, muscle tissue is located below the dermal layer. Thus, Vadoud discloses needless administration of a botulinum toxin to a different and distinct target site than that recited in the present claims.

As discussed herein, and as acknowledged by the Examiner, Borodic does not disclose, needless injections of botulinum toxin. Therefore, Borodic does not disclose, teach, or even suggest using a needleless syringe having a pressure sufficient

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to deliver the botulinum toxin to a muscle tissue associated with wrinkles or brow furrows.

Since the combination of Borodic and Vadoud do not disclose, teach, or suggest all of the elements of the present claims, applicant submits that the present claims, and claims 1, 2, 10, 12, 36, 37, and 43-45 in particular, are unobvious from and patentable over Borodic and Vadoud under 35 U.S.C. § 103.

Regarding the rejection of claims 3, 4, 38, and 39 over Borodic in view of Vadoud, and further in view of McCabe, applicant submits that McCabe fails to resolve the deficiencies of the combination of Borodic and Vadoud. For example, McCabe does not disclose, teach, or even suggest administration of a botulinum toxin using a needleless syringe having a pressure sufficient to deliver the botulinum toxin to a muscle tissue associated with wrinkles or brow furrows. Since the combination of Borodic, vadoud, and McCabe fail to disclose, teach, or suggest all of the elements recited in the present claims, applicant submits that the present claims, including claims 3, 4, 38, and 39, are unobvious from and patentable over Borodic, Vadoud, and McCabe under 35 U.S.C. § 103.

In addition, each of the additional present dependent claims is separately patentable over the prior art. For example, none of the prior art disclose, teach, or even suggest the present methods including the additional feature or features recited in any of the present dependent claims. Therefore, applicant submits that each of the present claims is separately patentable over the prior art.

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In view of the above, applicant submits that the present claims, that is claims 1-4, 10, 12, 36-39, and 43-45, are unobvious from and patentable over Borodic, Vadoud, and McCabe, in any combination under 35 U.S.C. § 103.

Conclusion

In conclusion, applicant has shown that the present claims satisfy the requirements of 35 U.S.C. § 112, and are not anticipated by and are unobvious from and patentable over the prior art under 35 U.S.C. §§ 102 and 103. Therefore, applicant submits that the present claims, that is claims 1-4, 10, 12, 36-39, and 43-45 are allowable. Therefore, applicant respectfully requests the Examiner to pass the above-identified application to issuance at an early date. Should any matters remain unresolved, the Examiner is requested to call (collect) applicant's attorney at the telephone number given below.

Date: 3/28/05

Respectfully submitted,



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